IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 48/2007

Judgment reserved on: November 14, 2007

Judgment delivered on: December 20, 2007

M/s United India Insurance Co. Ltd. ..... Appellant
Through: Mr. A.K. De, Adv.

versus

Budhi Ram & Ors. ..... Respondents
Through: Mr. Rajiv Gupta, Adv. for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

By way of the present appeal the appellant seeks to challenge the impugned award mainly on three grounds that the Tribunal has wrongly applied the multiplier of 17 years by ignoring the age of the parents of the deceased and has taken into consideration the age of

the deceased. The next contention of the counsel for the appellant is that the Tribunal has wrongly taken into consideration future prospects of the deceased when no such future prospects were proved by the respondents/ claimants on record. Thirdly, the appellant is aggrieved by the finding of the Tribunal, granting 1/3rd personal expenses out of the income of the deceased, although the deceased being of 26 years of age at the time of accident would have soon got married and thereafter the personal expenses were bound to be increased. Before adverting to deal with the said contentions of the counsel for the appellant it would be desirable to set out the brief facts of the case, which are as under:-

On 15.8.2003, Shri Rohi Bahal and Shri Dharamvir were travelling on a two wheeler scooter bearing registrationNo. DL4S 0401 from the residence of Shri Rohit Bahal towards Raja Garden via Ring Road. The scooter was being driven by Shri Rohit Bahal and Shri Dharamvir was the pillion rider. On their reaching near Gurudwara, Rajouri Garden, a truck bearing registration No. DL1GB 1250, being driven in a most rash and negligent manner by its driver, came from behind and collided with the scooter, as a result, both the

riders fell down and suffered fatal injuries. The driver of the said offending vehicle ran away from the accident site. A claim petition was filed by the parents of the deceased, appellants herein, in 2003 itself and award was passed on 18.11.2005. Aggrieved with the said Award present appeal is preferred by the appellants insurer of the offending vehicle.

I have heard learned counsel for the parties at a considerable length and have perused the records. On the first contention pertaining to the multiplier, the counsel for the appellant contended that the age of the deceased was 26 years while, age of the mother of the deceased was 50 years and that of the father was 55 years and, therefore, appropriate multiplier under the Second Schedule taking the average of the age of the parents would be 11 years, but the Tribunal has applied the multiplier of 17 after taking into account the age of the deceased, who died at the age of 26 years. The contention of the counsel for the appellant is that the legal position in this regard is well settled that the multiplier has to be applied considering the age of the deceased or the age of the dependents whichever is higher, but in the present case the Tribunal has ignored this settled law position

and has wrongly applied the multiplier after considering the age of the deceased only and not considering the age of the parents of the deceased. In this regard, the Apex Court has held in **New India Assurance Co. Ltd. v. Kalpana,(2007) 3 SCC 538**

> **"7.** The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

As per the age of the parents of the deceased the multiplier under the Second Schedule of the Motor Vehicles Act is 11 and, therefore, the impugned Award determining the said multiplier of 17 needs to be modified by applying the multiplier of 11. As observed above, the legal position in this regard is no more res integra that the choice of multiplier is determined by the age of the deceased or that of the claimant whichever is higher. Taking the age of the claimants/respondents, the appropriate multiplier as per the Second Schedule of the Motor Vehicles Act, would be 11 and not 17 as

assessed by the Tribunal. The multiplier is accordingly modified from 17 to 11.

As regards the contention of the counsel for the appellant that the Tribunal has wrongly taken into consideration the future increase in the income of the deceased without their being any material placed by the claimants on record or any evidence laid in this regard. Perusal of the Award shows that the deceased was working as a private driver on a monthly salary of Rs. 3000/- and the Tribunal has taken the help of Minimum Wages to assess the monthly income of the deceased. On the relevant date of the accident as per the Minimum Wages Act the deceased was entitled to minimum wages of Rs. 2784/- and the said minimum wages would certainly have increased within a period of 11 years and, therefore, there is nothing wrong in the findings of the Tribunal if the increase in the Minimum Wages have been taken into consideration. Further taking note of the increase in the minimum wages for the past 10 years, it can be noticed that there is almost 225% increase in these wages. In the year 1980 wages for skilled worker was Rs. 320 per month and in the year 1990 the said wages came to be Rs. 1043/- per month. This increase

in the wages cannot be treated at par or akin to the future prospects, as such increase in the wages are bare minimum and the same are determined by the Government after taking into account the price index, cost of living, inflation and denunciation of currency value. This increase in the Minimum Wages is thus cost neutralizing factor as the inflation eats into the purchasing power of the rupee and, therefore, such a future increase if taken into account would provide the bare minimum for the sustenance of the dependent family members of the deceased. Although the Tribunal has used the philosophy of such increase as towards future prospects, but practically the same is in the shape of future increase in the Minimum Wages and, therefore, I do not find any infirmity in the finding of the Tribunal on this issue.

I do not find any force in the contention of the counsel for the appellant that the Tribunal has wrongly deducted 1/3rd of the income of the deceased towards personal expenses and the same should have been at least half of the personal expenses keeping in view the age of the deceased, who would have certainly got married after some time. In the case of ***Fakeerappa v. Karnataka Cement Pipe Factory,(2004) 2 SCC***

473 the Apex Court has restricted the deduction of personal income to 1/3rd from the monthly income in the case of deceased, who was 27 years of age and applying the same principle I do not find that there is any illegality in the finding of the Tribunal deducting 1/3rd of the income of the deceased towards personal expenses. Relevant para of the said judgment is reproduced below:-

> **"7.** What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.
> **8.** It has to be noted that the ages of the parents as disclosed in the claim petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post-mortem and about which there is no dispute, the father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the claim petition. Be that as it may, taking into account special features of the case we feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted, as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court, the plea was not taken."

In the light of the aforesaid discussion, the impugned Award is modified to the extent of reducing the multiplier from 17 to 11 and rest of the Award shall remain the same. With these directions the present appeal is disposed of. The appellant shall now be liable to pay a sum of Rs. 4,17,488/- and shall pay the amount along with upto date interest @ 6% from the date of filing of the petition till realisation.

Vide order dated 22.1.2007, the directions were given to the appellant to deposit 60% of the award amount and balance 40% of the awarded sum was under stay. The matter is now remitted back to the Tribunal for carrying out the said modification and for appropriate apportionment of the award.

Parties are directed to appear before the concerned Tribunal on ------.

December 20, 2007 **KAILASH GAMBHIR**
rkr **JUDGE**